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In re Application of :
MARCHTHALER et al. :
Application No.: 10/563,992 : COMMUNICATION
PCT No.: PCT/DE04/01628 : &
Int. Filing Date: 22 July 2004 : NOTIFICATION OF
Priority Date: 04 August 2003 : ABANDONMENT
Attorney Docket No.: 10191/4331 :
For: ANTIGLARE SYSTEM FOR A VEHICLE

This communication is in response to applicants' "Response to 'Notification of Defective Response' to Missing Requirements under 35 U.S.C. 371" filed 16 November 2006.

BACKGROUND

On 22 July 2004, applicants filed international application PCT/DE04/01628 which claimed a priority date of 04 August 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 17 February 2005. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 February 2006.

On 09 January 2006, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); the international application; and a preliminary amendment.

On 04 May 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 31 May 2006, applicants filed a declaration executed by: Reiner Marchthaler; Hans-Dieter Bothe; Hoang Trinh; Heiko Freienstein; Thomas Engelberg; and Matthias Wellhoefer.

On 16 October 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration filed 31 May 2006 was defective because it indicated additional inventors (Reiner Marchthaler and Matthias Wellhoefer) not listed on the published international application.

On 16 November 2006, applicants filed the present "Response to 'Notification of Defective Response' to Missing Requirements under 35 U.S.C. 371."

DISCUSSION

The 16 November 2006 communication is not a proper reply to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 04 May 2006. Applicants state in the communication that, "Reiner Marchthaler and Matthias Wellhoefer are proper joint inventors of the present application claimed in the above-identified application, and the omission of Reiner Marchthaler and Matthias Wellhoefer was an error in the International Application." In this case, a proper response must include a petition under 37 CFR 1.497(d), if the International Bureau has not recorded a change under PCT Rule 92bis. A petition under 37 CFR 1.497(d) must be accompanied by: (1) a statement from each person being added as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) The processing fee set forth in § 1.17; (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees; and (4) any new oath or declaration required by paragraph (f) of this subsection. Applicants have not filed the response required by the Code of Federal Regulations. Specifically, no petition or fee, no statement from each person being added as an inventor regarding the error in inventorship, and no consent of assignee have been provided. Because the failure to file the proper response does not appear to have been the result of an inadvertent omission (37 CFR 1.135(a)), applicants will not be accorded a new time period to correct the deficiencies in the response. Accordingly, the application is hereby held to be abandoned.

CONCLUSION

For the reasons discussed above, this application is ABANDONED.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived. This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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